

RECEIVED  
November 5, 1958

November 5, 1958

NEW HAMPSHIRE LAW LIBRARY

OCT 01 1998

CONCORD, N.H.

Kenneth L. Cowan, Director  
Division of Inheritance Taxes  
State Tax Commission  
Concord, New Hampshire

Re: Estate of Francis M. Morrill

Dear Sir:

In a letter of October 14, 1958 you forwarded to us your file in the above-entitled estate. You drew our attention to a petition filed in this estate by the administrator in which the administrator prayed that he might be excused from filing a final account therein, on the ground that the sole assets consisted of a checking account in the amount of \$129.63 against which there were liabilities - including the undertaker's bill, a bill for some work with respect to the grave, and the hospital bill - in the amount of \$507.47. It was further pointed out in the petition that the administrator himself had advanced the necessary funds in order to meet the deficit of the liabilities over the assets and that he knew of no other outstanding debts owed by the estate.

You inquire if you may determine the tax liability of the estate based upon the petition or if you must compel completion of administration. It is our view that you may in your sound discretion and upon the allowance of the petition under discussion by the Court, find the tax liability of the estate and give whatever discharge may be appropriate.

RSA 86:6 subjects property passing upon the death of the owner - unless to excepted classes - to an inheritance tax. The remainder of chapter 86 is, substantially, in aid of this taxing provision. There are a few mandatory requirements with respect to the actual reporting and collection of the tax. Thus, RSA 86:18 requires a list of heirs to be filed; RSA 86:20 makes mandatory the furnishing of a bond; by RSA 86:21 the fiduciary must file an inventory under oath within three months after his appointment. There are other provisions as that of RSA 86:22 calling for a report of

# C O P Y

Kenneth L. Cowan -- 2.  
November 5, 1958

gifts and transfers. But beyond the few statutory procedural requirements, many of the steps looking to the ultimate collection of the tax are left to the fiduciaries, to the Probate Courts, and in large measure to the Director. Thus, beyond the rather preliminary steps listed above, together with the requirement concerning the date when the tax is due (RSA 86:54) the precise method by which the amount of the tax is to be determined and the method of its payment established lie within the province of the several parties concerned. How the Director shall establish the amount to which the State is entitled is in large measure discretionary with him. There are, we know, certain limitations as, for example, those set forth in RSA 86:44. But when the statutory standards are met, the Director can proceed in any fashion he believes will protect the rights of the State.

Turning, then, to the present matter and the petition which we are now considering, it is noted that the assets set forth in the petition are in accord with the statement of assets found in the inventory. You do not suggest that the inventory is questioned; and in the ordinary case, as I understand your procedure, you would not attempt to assess a tax greater than eight and one-half per cent of the gross inventory value of \$129.63 as reported. Since the petition does not contemplate the allowance of an account in the ordinary course, you could, undoubtedly, properly assess a tax upon the full inventory value. But no reason is seen why you may not give credence to the statement of the administrator with respect to expenses actually incurred and determine liability with respect to the net estate after the deduction of such expenses. In the present case, of course, the tax might be zero or some greater figure, not exceeding eight and one-half per cent of \$129.63, as you find proper in view of the expenses which you may see fit to allow.

I wish to point out most emphatically that in adopting such a course in the present instance you ought not deem yourself thereby as setting a precedent which will be in any way binding upon you. Your duty is to collect such tax as may be due the State under the statute. Except as otherwise prescribed by law, the amount due is one for your own prescription. Each case may be deemed to turn upon its individual facts. You have in this area broad discretion; and no fiduciary may demand that you choose one course or another in a given instance so long as you do not attempt to tax a greater sum than that made taxable by law.

Very truly yours,

Warren E. Waters  
Deputy Attorney General